

ORIGINAL

(6)
2/13/01

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

FEB 12 2001

MARY E. D'ANDREA, C.
Per g/s Deputy Clerk

DARRYL L. JONES,
Petitioner

vs.

CIVIL ACTION NO. 1:CV-00-2183
(Judge Rambo)
(Magistrate Judge Smyser)

FRANK D. GILLIS, ET AL.,
Respondents

RESPONDENTS' MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE J. ANDREW SMYSER, UNITED STATES MAGISTRATE
JUDGE:

AND NOW, comes Edward M. Marsico, Jr., District Attorney of
Dauphin County, by James P. Barker, Deputy District Attorney, who, on behalf of
the Respondents, files this motion to dismiss the petition for writ of habeas corpus,
and in support thereof avers the following:

1. On December 15, 2000, Petitioner, Darryl L. Jones, filed a petition for a writ of habeas corpus asserting eight (8) grounds for relief.

2. On September 17, 1998, after a two-day jury trial, Jones was convicted in the Court of Common Pleas of Dauphin County of three counts of forgery, one count of theft by deception, and one count of criminal attempt (theft by deception).

3. Jones was sentenced on September 17, 1998, to an aggregate term of incarceration of forty-five (45) months to one hundred eighty (180) months, fines in the amount of \$1,700.00, costs of prosecution, and restitution in the amount of \$200.00.

4. Jones filed a motion to modify sentence, which was denied on September 24, 1998.

5. Jones then pursued a direct appeal to the Pennsylvania Superior Court, which affirmed the conviction and sentence by Memorandum Opinion filed August 26, 1999.

6. No petition for allocatur was filed with the Supreme Court of Pennsylvania.

7. On October 8, 1999, Jones filed an "Application to File Petition for Allowance of Appeal Nunc Pro Tunc," which was denied on February 7, 2000.

8. The instant Petition for Writ of Habeas Corpus was filed more than one year from the last date on which a petition for allocatur could have been filed.

9. The instant Petition for Writ of Habeas Corpus is time-barred, and no tolling provision applies which would allow Jones to bring his Petition.

10. Under Rule 11 of the Rules Governing Section 2254 Proceedings in the United States District Court, 28 U.S.C. following §2254, the Federal Rules of Civil Procedure apply to Section 2254 proceedings to the extent they are not inconsistent with the Rules Governing Section 2254 Proceedings.

11. Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a pleading is subject to dismissal if the pleading fails to state a claim upon which relief may be granted.

12. Rule 12(b)(6) is consistent with the Rules Governing Section 2254 Proceedings.

13. The Petition for Writ of Habeas Corpus fails to state a claim upon which relief may be granted because it is untimely, such untimeliness appearing on the face of the Petition.

WHEREFORE, the Respondents respectfully request that this Honorable Court dismiss the Petition for Writ of Habeas Corpus pursuant to Fed.R.Civ.P. 12(b)(6) and Rule 11 of the Rules Governing Section 2254 Proceedings.

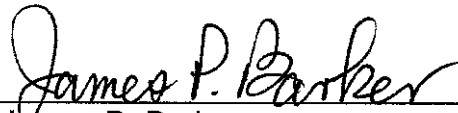
Respectfully submitted,

A handwritten signature in black ink, reading "James P. Barker". The signature is written in a cursive, flowing style.

James P. Barker
Deputy District Attorney

VERIFICATION

I verify that the facts contained in the above pleading are true and correct to the best of my knowledge, information and belief. I understand the facts herein are verified subject to the penalties for unsworn falsification to authorities under Crimes Code, Section 4904 (18 Pa.C.S. §4904).



James P. Barker
Deputy District Attorney

IN THE UNITED STATES DISTRICT COURT
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DARRYL L. JONES,
Petitioner

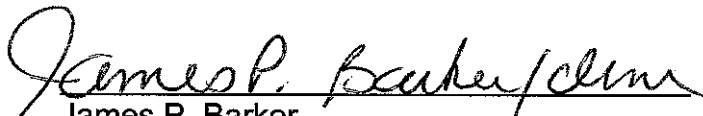
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: (Judge Rambo)
: (Magistrate Judge Smyser)
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CERTIFICATE OF SERVICE

This is to certify that a copy of the Respondents' Motion to Dismiss Petition for Writ of Habeas Corpus in the above-captioned matter was sent, on the below stated dated, to the Petitioner, Darryl L. Jones, DT-3384, at the State Correctional Institution at Coal Township, 1 Kelley Drive, Coal Township, Pennsylvania 17866-1021.


James P. Barker
Deputy District Attorney
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Front and Market Streets
Harrisburg, Pennsylvania 17101
(717) 255-2770
Attorney for Respondents

Dated: February 12, 2001